conclusion that the 1st defendant cannot be exempted from liability for shock to the plaintiff on the ground of remoteness. The plaintiff is therefore entitled to recover damages under this head. In trying to arrive at a figure little assistance is gained from considering recent English awards which range from £75 to £2,300. The Doctor's evidence showed that plaintiff is genuinely suffering from shock and she appeared to me to be still a sick woman nearly two years after the accident. I consider she is entitled to a substantial part of the amount she claims and I award the sum of $5,000.

(III). Loss of expectation of life of the deceased. $4,000.00.

Counsel for the 2nd defendant submitted that no such cause of action lies in Kedah as the relief is purely statutory. He argued that the ruling in *V. Karupanan v. The Empire Theatre*[5] no longer applied as the 1948 Courts Ordinance now in force contains no power as provided in section 11 of the old Kedah Courts Ordinance and that Kedah Enactment No. 2 of 1360 does not specifically provide for an action for loss of expectation of life.

It was probably never intended that the citizens of this State should be deprived of this right, but it seems to be the case that there is no statutory provision existing at the present time and that the change in the law above referred to extinguished the right to sue in Kedah for loss of expectation of life. In my view therefore the submission on behalf of the 2nd defendant is correct and the plaintiff is not entitled to recover under this head.

(IV). Funeral and incidental expenses arising out of the death of the deceased and incurred by the Plaintiff, $350.00.

This amount was not disputed and the plaintiff is entitled to recover $350.

There will therefore be judgment for the plaintiff for the amounts set out above, totalling $7,510 and costs.

Judgment for the plaintiff.

Solicitors: *Presgrave & Matthews; Conaghan, Wreford & Thornton.*

TUKIRAN BIN TAIB v. PUBLIC PROSECUTOR

[R. Cr. J. (Bellamy J.) January 14, 1955]

[K.L.—Criminal Revision No. 40 of 1954]

Criminal Procedure — Young offender — Plea of guilty — Practice — Duty of Magistrate.

It is very desirable that a young first offender who is between the ages of 17 and 21 should be kept out of prison, if possible; it would be more beneficial to him, and in the long run to the community at large, to send him to an advanced approved school.

It is the duty of a trial Judge before passing sentence to record some evidence in a criminal case where the accused pleads guilty. In cases of doubt or difficulty it may be advisable to have evidence led as to the facts. Magistrates should make careful inquiries "regarding the background, antecedents and character" of the convicted person, and this is particularly of importance when the convicted person is a young offender and it is contemplated imposing a sentence of imprisonment. A probation officer's report should always be called for, and a Magistrate should not hesitate to adjourn the case in order to obtain such a report before passing sentence.

Cases referred to:—

(1) *Palan v. Public Prosecutor* (1932) M.L.J. 124.

(2) *Public Prosecutor v. Nahat Singh* (1939) M.L.J. 239.

(3) *Public Prosecutor v. Chean Tin* (1939) M.L.J. 266.

(4) *Chin Ban Keat v. Rex* (1949) M.L.J. 297.

(5) *Abu Bakar bin Alif v. R.* (1953) M.L.J. 19.

(6) *Ong Ah Thoo v. Rex* (1949) M.L.J. 36.

CRIMINAL REVISION.

Cur. Adv. Vult.

Bellamy J.: — In this case Tukiran bin Taib was charged in the Magistrate's Court at Tanjong Karang with the theft of 167 coconuts under Section 379 of the Penal Code. He pleaded guilty and was sentenced to four months' imprisonment. As the accused is 17 or 18 years old, I called for the record of the proceedings to satisfy myself as to the propriety of the prison sentence imposed by the Magistrate.

The facts, which I am assured by the Deputy Public Prosecutor were admitted in Court by the accused, briefly were these. On 1st December, 1954 about 3 p.m. a watchman patrolling Banjor Estate, a coconut plantation at Kampong Batu Lima, caught the accused red-handed on the estate unhusking coconuts which he had recently plucked by means of a bamboo pole from two lines of twelve coconut trees on the estate. When asked for an explanation, the accused glibly stated that he was merely working for a Chinese who had purchased the coconuts in question from the clerk in charge of the estate. So saying, he put the coconuts he had already unhusked into a sack and sauntered off into a neighbouring plantation. The watchman then made enquiries concerning what the accused had told him, and it was then discovered his story was false and that in fact the accused had plucked, and removed, the coconuts without the consent of the owner of the estate or the clerk in charge thereof. The theft was reported to the police who arrested the accused on the following day. In mitigation, the accused told the Magistrate that he had "no 'wang' (money) for expenses."

As regards sentence, in my view this was as bad and as bold a case of stealing produce as any that has been brought to the notice of this Court in recent times. Thefts of coconuts from plantations in this particular district, and elsewhere, in this state are reported to be widespread, to be on the increase, and to be causing grave concern to estate owners and to the authorities. Everybody knows how difficult it is to catch the thieves, and there can be not the smallest room for doubt that this evil must be stamped out and, if it is necessary, by heavy prison sentences. In the circumstances of this case, I do not consider a sentence of four months' imprisonment to be in the lease bit excessive and, if the accused was over 21 years old, I would not interfere with this sentence.

However, as I stated earlier, the accused is at most 18 years old — he is said to look very much younger — and he is furthermore a first offender. It has been stressed by this Court that it is very desirable that young offenders, that is, offenders between the ages of 17 and 21 years, who are also first offenders, should be kept out of prison, if possible. The Magistrate does not appear to have taken this into consideration at all. I consider that it would be more beneficial to the accused, and in the long run to the community at large, to send him to an advanced approved school rather than to prison, and I therefore quash the sentence of four months' imprisonment and order that the accused be committed for three years to the Henry Gurney School at Telok Mas.

The case presents an occasion to make the following remarks. Firstly, as far back as 1932 it was laid down by the Court of Appeal that it is the duty of a trial Judge before passing sentence to record some evidence in a criminal case where the accused pleads guilty (See *Palan v. Public Prosecutor*[1]). Since that case the attention of Magistrates has frequently been directed by Judges of the Supreme Court to the importance of observing this practice (See *Public Prosecutor v. Nahat Singh*[2]; *Public Prosecutor v. Chean Tin*[3]). In *Chin Ban Keat v. Rex*[4], Jobling J. went to the trouble of giving directions as to whether evidence should be led as to the facts alleged or if they should be merely stated by the prosecuting officer. He said, at page 298 :—

"This is a matter of practice which must be left to the presiding Magistrate. The aim of the Court is to record the facts alleged by the Prosecutor and admitted by the accused and to satisfy itself that they constitute the offence charged."

"In most cases this can be satisfactorily achieved by a statement by the Prosecuting Officer followed by an admission by the accused but in cases of doubt or difficulty it may be advisable to have evidence led as to the facts. The course adopted in each case must be left to the Court's discretion."

Every Magistrate should know by this time what his duty is in this connection. In the present case, no record was made by the Magistrate of the facts, with the result that this Court was obliged to obtain the assistance of the Deputy Public Prosecutor to ascertain what the facts relied upon by the Prosecution were, whether those facts had been stated to the trial Magistrate by the Prosecuting officer, and whether the accused had admitted such facts. These inquiries involved much labour and a considerable loss of time which would have been avoided if the Magistrate had recorded the facts, and also whether the accused admitted them, as he was required to do. I have set out the relevant authorities in the hope that Magistrates will read and note them so that this will not occur again.

Secondly, before passing sentence Magistrates should first make careful inquiries "regarding the background, antecedents and character" of the convicted person, (See *Abu Bakar bin Alif v. R.*[5]), and this is particularly of importance when the convicted person is a young offender and it is contemplated imposing a sentence of imprisonment. A probation officer's report should always be called for, and a Magistrate should not hesitate to adjourn the case in order to obtain such a report before passing sentence. Inexperienced Magistrates sometimes are in doubt as to the proper manner of bringing in such a report. The probation officer should be called as a witness and give the substance of this report in evidence. (See *Ong Ah Thoo v. Rex*[6]).

Order accordingly.

Re SIM THONG LAI

[O.C.J. (Taylor J.) January 14, 1955]

[Singapore—Adoption Petition No. 41 of 1953]

Adoption of Children Ordinance, 1939, s. 10 — Chinese custom — Customary gift of "ginger and cake" money — Whether an unlawful consideration — Sanction of Court.

This petition was an application to legalise an adoption which *de facto* had already been completed. The petitioners and the natural parents were all working people and the child was not entitled to any property. A Social Welfare Officer who had investigated the case on behalf of the Attorney-General, as guardian of the infant *ad litem*, reported that there had been no monetary transaction regarding the adoption except that the petitioners gave to the natural parents a red packet containing $200, a few yards of cloth and two bottles of wine, as a customary gift.

The natural and adopting mothers testified that when the adoption was agreed, the child being about five weeks old, it was agreed that the adopters should pay $200 to cover the confinement expenses and the maintenance of the child up to the date of transfer of custody. In amplification of this evidence the Secretary for Chinese Affairs, in his affidavit, said, *inter alia*. "It is rather a token of compensation to the parents for the